

15CV8100

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

ORIGINAL

<b>United States District Court</b>		District	The Southern District of New York
Name (under which you were convicted): David Williams		Docket or Case No.: 09CR-558 CM	
Place of Confinement: Federal Correctional Institute		Prisoner No.: #70659-054	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. David Williams	

## MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court for The Southern District of New York. Before The Honorable Judge Daniel Patrick Moynihan, United States Courthouse, 500 Pearl street, Room 120, New York, N.Y. 10007-1312

(b) Criminal docket or case number (if you know): 09 CR 558 CM

2. (a) Date of the judgment of conviction (if you know): 10/18/2010

(b) Date of sentencing: 6/29/2011

3. Length of sentence: 25 years

4. Nature of crime (all counts):

18 U.S.C §§§§ 2 2332a, 2332a, 2332g and 2333g; §§ 1114 and 1117

5. (a) What was your plea? (Check one)

(1) Not guilty ☒(2) Guilty ☐(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒No ☐

## 9. If you did appeal, answer the following:

- (a) Name of court: United States Court of Appeals Second Circuit
- (b) Docket or case number (if you know): 11-2884 (coon)
- (c) Result: Affirmed
- (d) Date of result (if you know): 11/5/2012
- (e) Citation to the case (if you know): 727 F. 3d 194 :: United States v. Cromitie:: 11/05/2012
- (f) Grounds raised:

The appeal primarily presents issues concerning the extent to which government informant may lawfully urge the commission or crimes, issues framed as claims or entrapment as a matter of law and outrageous government conduct in violation of the Due Process Clause. Also falsify of portions of the governments informant's trial testimony.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): 13-9691
- (2) Result: Denied
- (3) Date of result (if you know): 10/6/2014
- (4) Citation to the case (if you know): 135 S.Ct. 54:: Williams v. United States :: 10/06/2014
- (5) Grounds raised:

Reiterating the challenges before the Second Circuit Court of Appeals

## 10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

## 11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☐

(2) Second petition:

Yes ☐

No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Ineffective assistance counsel during the pre- trial stage of his representation.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Pre trial counsel's in artful drafting of the argument :(i) government misconduct would warrant dismissal of an indictment violates movant's due process rights, but not that the overlapping time frame of the conspiracy where the movant's role " was central to the success of the conspiracy", and over all activity so disproportionate to this time frame requires severance of the defendant or dismissal of the indictment.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

Second Circuit precedent, finding that the application of the unusual procedural default rule to the ineffective assistance counsel would create the risk that the defendants would feel compelled to raise (cont page 12)

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

## **GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant now avers that the trial counsel was ineffective when failing to object to the governments's witness Hussain testimony under the rule of completeness law doctrine particaly codified in rule 106 of the Federal Rules of Evidence. Because the governments information mislead the jury with including movant in the conspiracy from June 2008 up and to April 2009, without counsel's objection under "substantially applicable to oral testimony" as well by virtues of Federal Rules Of Evidence 611 9a). However, because counsel failed to object to government witness misleading the jury with relevant evidence that movant became a member of the conspricay as late as April 2009, now constiutes ineffective assistance of counsel during trial.

### **(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Trial counsel was also Appellate counsel and at the time this claim became ripe for the appeal ineffective assistance of counsel requires that the record be completed.

### **(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE:** Ineffective Assistance of Counsel during a Critical Stage during the trial and the jury instructions on Hussain as a co conspirator in violation of the Fifth, Fourteenth, and Sixth Amendment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant now argues that co- conspirator Hussain, could not have conspired with him because he was a known government agent or informant in violation of the Sears Rule, and that his Fifth Sixth and Fourteenth. Here, trail counsel failed to investigate that both the indictment and the jury instructions were insofar as Hussain his alleged co-conspirator related to the Sears Rule and mirror Sixth Amendment violation with him receiving a fair trial. And that counsel failing to object to the court's jury instructions explaining to the jury that under the Sears Rule the co - conspirator Hussain involvement in the conspirator required that the government disclose that the defendants could not conspire with the government's known informant. In line with the counsel ineffectiveness with not

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Sixth Amendment Right to a fair trial, ineffective assistance of counsel can not be raised on direct unless the record is complete.

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

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**GROUND FOUR: Ineffective Assistance of Appellate Counsel**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appellant Counsel failure to raise on appeal an affirmative defense on the indictments dates if the conspiracy commencing from June 2008 up to and included May 2009, but that a fatal variance occurs when the indictment and government's evidence failed to provide that the movant was part of the 2008 conspricacy begining from June 2008. Because the indictment failed to afford adequate notice of movant's knowledge of the 2008 conspiracy the trier of fact was mislead to find that movant was guilty of the entire conspiracy from the date of June 2008 up until May 2009.

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

The Appellate Record had not accrued to challenge appellate counsel on direct appeal.

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All claims presented before this have not previously been raised nor reviewed before the instant action.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:  
Theodore Samuel Green, Lead Attorney , Green & Willstatter
- (b) At the arraignment and plea:  
Same as above
- (c) At the trial:  
Same as above
- (d) At sentencing:  
Same as above
- (e) On appeal:  
Same as metioned throughout
- (f) In any post-conviction proceeding:  
In Propria Persona
- (g) On appeal from any ruling against you in a post-conviction proceeding:  
Same as mentioned
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:  
N/A
- (b) Give the date the other sentence was imposed: \_\_\_\_\_
- (c) Give the length of the other sentence: \_\_\_\_\_
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*
- \*This Petition is well within the one year statutory limitation and submitted upon a final determination of a Writ Certiorari. See 28 U.S.C. § 2255 (f) (1) & (2)

Direct Appeal Of Ground One:

continue B (2) from page 5

The issue before there has been an opportunity fully to develop the factual predicate for the claim. Thus, because trial counsel was also appellate counsel challenging his deficiency with not including the overlapping time frame of conspiracy as grounds for a servance is held to bring an ineffective assistance claims via § 2255

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Conviction and Sentence Vacated as a matter of Law.

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or any other relief to which movant may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 8/31/2015,  
(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

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Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

AO 243 (Rev. 01/15)

Therefore, movant asks that the Court grant the following relief:

Conviction and Sentence Vacated as a matter of Law.

or any other relief to which movant may be entitled.

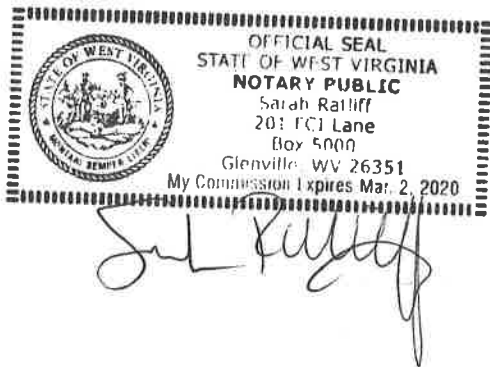
\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion  
under 28 U.S.C. § 2255 was placed in the prison mailing system on 8/31/2015  
(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

David Mathews Jr  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.



AO 243 (Rev. 01/15)

Page 13

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\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 8/31/2015  
(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

David Withers Jr  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

